

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTSJohn Dennis,
Plaintiff,

v.

Wachovia Securities, LLC
Defendant.

CIV. NO.

05 11270 GAO**VERIFIED COMPLAINT AND MOTION TO VACATE
ARBITRATION AWARD**MAGISTRATE JUDGE JGD

65071
 250.00
 SUMMONS ISSUED 1
 LOCAL RULE 4.1 -
 WAIVER FORM -
 MCF ISSUED -
 BY DPTY. CLK. M.P.
 DATE 6/7/05

1. Plaintiff, John Dennis ("Claimant"), resides at 29 R. F. Higgins Drive, Norwell, Massachusetts 02161.
2. Defendant, Wachovia Securities, LLC ("Respondent"), has a place of business at 901 E. Byrd St., Riverfront Plaza, Richmond, Virginia 23219.
3. The matter herein in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs.
4. On or about March 21, 2005 and continuing until January 22, 2005, Claimant, Respondent and Mr. Michael A. Ewanouski engaged in an arbitration under the auspices of the National Association of Securities Dealers, Inc. A copy of Claimant's claim is attached hereto as Exhibit 3.
5. The decision of the Arbitrators in favor of Respondent is attached hereto as Exhibit 1.
6. Claimant opened up his account at Wachovia's predecessor and Mr. Ewanouski, an employee of Respondent, testified that the document

introduced at the hearing as Claimants Exhibit 2 was prepared on his behalf. It is attached hereto as Exhibit 2.

7. Exhibit 2 sets forth Claimant's investment objective as "growth (quality emphasis)."
8. Claimant and Mr. Ewanouski, his broker at Respondent, differ on what Mr. Dennis indicated his objectives were. They both, however, acknowledge Exhibit 2 and the investment objective set forth therein.
9. The rules of the National Association of Securities Dealers, Inc. state that Respondent Wachovia is required to follow the rules of the association. Rule 2310 in part states:

“(a) In recommending to a customer the purchase, sale or exchange of any security, a member shall have reasonable grounds for believing that the recommendation is suitable for such customer upon the basis of the facts, if any, disclosed by such customer as to his other security holdings and as to his financial situation and needs.”
10. For violation thereof claimant is entitled to damages.
11. The NASD rules also prohibit unauthorized trades and while Mr. Dennis testified that Wachovia's employee traded for his account without permission, the employee testified that he did have permission and the arbitrators could have found the employees testimony more credible.

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12. Claimant sets forth in his statement of claim (attached hereto as Exhibit 3) that Respondent recommended and purchased during the period September 20, 1999 to and including April 4, 2002 the following securities which he claims were unsuitable:

<u>Security</u>	<u>Loss</u>
Ask Jeeves, Inc.	\$6,428.13
ELOT, Inc	\$16,687.50
EntreMed	\$11,212.50
Focus Enhancements	\$3,033.44
H Power	\$4,315.00
IXL Enterprises	\$10,389.99
Intasys Corp.	\$19,257.81
VA Linux Systems, Inc	\$38,372.50
SLI, Inc.	\$2,343.75
Intellidata	\$20,860.59

Or a total of \$132,891.21

13. Claimant did not introduce evidence on Ask Jeeves, Inc, Focus Enhancements and IXL leaving total losses proved of \$113,039.65.
14. Claimant's chinks showing his investment holdings on 9/20/99, 12/31/99, 6/30/00, 12/30/00, 6/30/01 and 4/4/02 , which were admitted as demonstrative evidence are attached as Exhibit 4.
15. Claimant's expert John Kattar testified as to his qualifications and to the methodology to determine whether the stocks were appropriate investments for Claimant:

"Q—Please tell us your educational background after high school.

A—I have—I graduated from the University of Massachusetts with a bachelor of arts degree and then went on to get a masters in electrical engineering, also from the same institution.

Q—When did you, forgive me for interrupting, when did you get your bachelor's degree?

A—1978.

Q—And what was your major course of study?

A—It was in classical languages.

Q—And your masters?

A—First masters was in electrical engineering and I believe that was in 1982 and MBA—Masters in Business Administration was from the University of Chicago. And that was in 1988.

Q—Did you graduate from any of these institutions with honors?

A—Ah Yes, all of them.

* * *

Q—Ah, Please give us a brief employment history after you received your MBA?

A—I worked for 9 years at Baring Asset Management as a an analyst and portfolio manager.

Q—Where was that?

A—In Boston.

* * *

A—I was responsible for managing money mostly for large pension plans, some individuals, and half domestic and half international clients

Q—And you left Baring Asset Management, why did you leave?

A—Better job, more money—went to work for Phoenix Investment Partners which is a mutual fund, mostly mutual fund money manager, in Hartford, Connecticut and there headed up the investment team and was there for 2 years.

Q—And did you leave?

A—Yes.

Q—Why did you leave?

A—Again left for a better opportunity but more so for personal reasons. I needed to return to the Boston area for personal reasons.

Q—And with whom did you work?

A—I was then employed at the Boston Company Asset Management for 2 ½ years as head of their equity group.

Q—And what were your duties there?

A—Uh, I managed a group of about 30 investment professionals and we managed about 15 Billion Dollars. So I had administrative responsibilities as well as investment management responsibilities.

Q—With respect---Did you leave that job?

A—Sort of , I actually went to the parent company of the Boston Company which is Mellon Financial and worked there for an additional 9 months as head of institutional growth equity division and my job was actually financial, to do the business planning for and start up of a separate subsidiary. It was called {unintelligible} Advisors

Q—And after that what did you?

A—After that I spent about 2 ½ years running my own company which was a an asset management company and also a consulting company. The consulting that I did was for other asset managers in the Boston area among them was Eastern Bank, my current employer.

Q—And for whom did you manage assets when you had your own firm?

A—All individuals it was all high net worth

Q—So you are in a position to determine suitability of investments for those high net worth individuals?

A—yes,

Q—And then you said you went to work for Eastern Bank. Can you tell us what you do?

A—I head up the investment team at Eastern Investment Advisers. This is a division of Eastern Bank, which is the largest remaining bank in Boston, based in Boston. We manage \$1.2 Billion, mostly for individuals. About 20% of our business is for charitable organizations and small institutions.

Q—So would you be in a position to determine suitability of investments for individuals?

A—Yes.

* * *

Q—Have you examined the needs of Claimant, Mr. Dennis?

A—Yes.

* * *

A. . . I am a chartered financial analyst and I, aside from my other responsibilities, I am vice chairman of the investment committee for the endowment of the University of Massachusetts

* * *

What criteria, you asked, I used to determine suitability. I was specifically asked to evaluate certain stocks as to their speculative nature and the criteria that I used to evaluate that were some of the following. I looked at financial strength. That would include things like the nature of the balance sheet, assets versus liabilities, cash, the amount of debt on the balance sheet, cash burn rate, cash flow, book

value, dividends, the size of the company as, all else being equal, bigger companies tend to be less speculative; debt rating if available, inclusion in the market indexes (a companies included in a major index generally tend to be less speculative) I also look at valuation, price-earnings ratios, price to book, and price value. To the extent that I know something about the management or the prospects for a company, I include that in the evaluation. So, the companies that are better managed are less speculative {unintelligible}. And finally I look at the operating history of the company and its growth rate, so specifically what I look at is earnings growth and revenue growth and the idea there would be that companies, which have been more stable and have better operating history, would be less speculative. Some companies which have exhibited a pattern of growth and profit over a period of time would be more stable and less speculative.”

16. Mr. Kattar then testified as to the suitability Mr. Dennis’s investments to his needs.

17. ELOT, Inc.

“I don’t have any information on it”

18. On information and belief the only possible inference is that this was a stock of little visibility, folded and therefore inappropriate.

19. Entremed

“I call this speculative and inappropriate”

20. H Power

“a company that no longer exists”

21. On information and belief the only possible inference is that this was a stock of little visibility, folded and therefore inappropriate.

22. Intasys

“speculative and inappropriate for most portfolios and certainly this one”

23. VA Linux Systems

“I would say it is speculative and inappropriate for most portfolios and certainly this one.”

24. SLI, Inc.

“I could not find anything on it {unintelligible}”

25. On information and belief the only possible inference is that this was a stock of little visibility, folded and therefore inappropriate.

26. Intellidata

“I don’t have any information”

27. On information and belief the only possible inference is that this was a stock of little visibility, folded and therefore inappropriate.

28. There is a great concentration of these stocks in the portfolio of Mr. Dennis’s retirement account as shown on Exhibit 4.

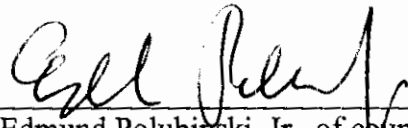
29. Respondent did not have an expert testify that the above stocks were suitable for his account; there is therefore no evidence to rebut the expert testimony of Mr.. Kattar.

30. Respondent’s employee, also a respondent in the arbitration merely testified that the above stocks were “growth stocks.”

31. Mr. Ward, Respondent's counsel, accepted Mr. Kattar as an expert:
Respondents' counsel : "I'm not going to object to his testimony, but I think that you ought to give it the weight it deserves based on my cross-examination."
- Panelist: "I give you the opportunity as to whether you were going to let him in or you were going to fight him."
32. The fact that there is no expert testimony to rebut Mr. Kattar's testimony which means Claimant's expert's testimony is the *only* evidence of suitability and the arbitrators did not take account of this.
33. The decision of the arbitrators, as between Claimant and Respondent, was therefore contrary to the facts and law to the extent that the arbitrators exceeded their powers and so imperfectly executed their powers that a mutual final and definite award upon the subject matter was not made.

WHEREFORE, Claimant moves this court that the award dated March 23 and 28, 2005 should be vacated pursuant to 9 U. S. C. § 10 and the matter should be referred for a new arbitration.

The plaintiff JOHN DENNIS,
by his attorneys,
LYNE, WOODWORTH & EVARTS LLP



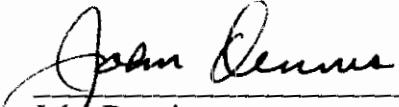
Edmund Polubinski, Jr., of counsel
BBO #402640
Federal Reserve Plaza
600 Atlantic Avenue
Boston, MA 02210
(617) 523-6655

Dated: June 16, 2005

VERIFICATION

I, John Dennis, hereby state that I have read the foregoing complaint, am familiar with the contents thereof, and state that the facts therein are true to the best of my knowledge and belief by my own personal knowledge and by my observation.

Signed under pains of perjury this 16th day of June , 2005.



John Dennis

Exhibit 1

*Dennis M.
LIT RLC*

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

John Dennis IRA (Claimant) v. Wachovia Securities, LLC and Michael Ewanouski
(Respondents)

Case Number: 04-00361

Hearing Site: Boston, Massachusetts

Nature of the Dispute: Customer vs. Member and Associated Person.

REPRESENTATION OF PARTIES

Claimant John Dennis IRA ("Dennis") hereinafter referred to as "Claimant": Edmund Polubinski, Jr., Esq., Richard and Tyler, LLP, Boston, MA. Previously represented by: Edmund Polubinski, Jr., Esq., Zimble & Brettler, LLP, Boston, MA.

Respondents Wachovia Securities, LLC ("Wachovia") and Michael Ewanouski ("Ewanouski") hereinafter collectively referred to as "Respondents": David L. Ward, Esq., Michaels & Ward, LLP, Boston, MA.

CASE INFORMATION

Statement of Claim filed on or about: January 16, 2004.

Claimant signed the Uniform Submission Agreement: January 8, 2004.

Joint Statement of Answer filed by Respondents on or about: April 9, 2004.

Respondent Wachovia signed the Uniform Submission Agreement: April 19, 2004.

Respondent Ewanouski signed the Uniform Submission Agreement: April 25, 2004.

CASE SUMMARY

Claimant asserted the following causes of action: unsuitability; unauthorized trading; misrepresentations and omissions. The causes of action relate to shares of Ask Jeeves, Inc., Elot, Inc., EntreMed, Inc., Focus Enhancements, Inc., H Power Corp., IXL Enterprises, Inc., Intasys Corp., VA Linux Systems, Inc., and SLI, Inc.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

Claimant requested compensatory damages in the amount of \$132,891.21; attorneys' fees; and costs.

Respondents requested that the Panel dismiss the Statement of Claim, with prejudice; costs and expenses, including reasonable attorneys' fees, forum fees, and such further relief as the Panel may deem just and proper. Furthermore, Respondent Ewanouski requested that the Panel order the expungement of this matter from his CRD record.

OTHER ISSUES CONSIDERED AND DECIDED

The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered.

AWARD

After considering the pleadings, and the testimony and evidence presented at the hearing, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimant's claim is dismissed in its entirety.
2. Any and all relief not specifically addressed herein including a request for expungement is denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Dispute Resolution will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee	= \$300.00
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Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm that employed the associated person at the time of the events giving rise to the dispute. Accordingly, Wachovia Securities, LLC is a party.

Member surcharge	= \$1,700.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$2,750.00

Forum Fees and Assessments

The Panel has assessed forum fees for each session conducted. A session is any meeting between the parties and the arbitrators, including a pre-hearing conference with the arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session with Panel @ \$1,125.00	= \$1,125.00
Pre-hearing conference: June 29, 2004 1 session	
Four (4) Hearing sessions @ \$1,125.00	= \$4,500.00
Hearing Dates: March 21, 2005 2 sessions	
March 22, 2005 2 sessions	
Total Forum Fees	= \$5,625.00

1. The Panel has assessed \$2,812.50 of the forum fees against Claimant.
2. The Panel has assessed \$2,812.50 of the forum fees jointly and severally against Respondents.

Fee Summary

1. Claimant is solely liable for:	
Initial Filing Fee	= \$ 300.00
Forum Fees	= \$2,812.50
Total Fees	= \$3,112.50
Less payments	= \$1,425.00
Balance Due NASD Dispute Resolution	= \$1,687.50
2. Respondent Wachovia is solely liable for:	
Member Fees	= \$5,200.00
Total Fees	= \$5,200.00
Less payments	= \$5,200.00
Balance Due NASD Dispute Resolution	= \$ 0.00
3. Respondents are jointly and severally liable for:	
Forum Fees	= \$2,812.50
Total Fees	= \$2,812.50
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$2,812.50

All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.

NASD Dispute Resolution

Arbitration No. 04-00361

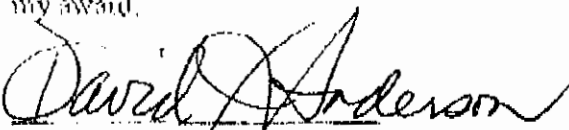
Award Page 4 of 4

ARBITRATION PANEL

David J. Anderson	-	Public Arbitrator, Presiding Chairperson
Jeffrey L. Levy, Esq.	-	Public Arbitrator
Stephen M. Acerro, Jr., Esq.	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.


David J. Anderson
Public Arbitrator, Presiding Chairperson

3/28/05
Signature Date

Jeffrey L. Levy, Esq.
Public Arbitrator

Signature Date

Stephen M. Acerro, Jr., Esq.
Non-Public Arbitrator

Signature Date

March 29, 2005

Date of Service (For NASD Dispute Resolution use only)

NASD REGULATION

NASD Dispute Resolution
Arbitration No. 04-00361
Award Page 4 of 4

ARBITRATION PANEL

David J. Anderson	-	Public Arbitrator, Presiding Chairperson
Jeffrey L. Levy, Esq.	-	Public Arbitrator
Stephen M. Acerra, Jr., Esq.	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

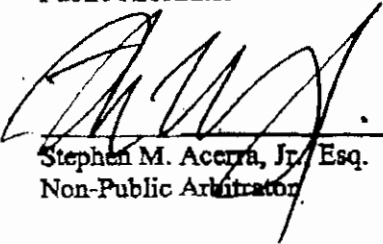
I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

David J. Anderson
Public Arbitrator, Presiding Chairperson

Signature Date

Jeffrey L. Levy, Esq.
Public Arbitrator

Signature Date



Stephen M. Acerra, Jr., Esq.
Non-Public Arbitrator

03-23-05

Signature Date

March 29, 2005
Date of Service (For NASD Dispute Resolution use only)

NASD REGULATION

NASD Dispute Resolution
Arbitration No. 04-00361
Award Page 4 of 4

ARBITRATION PANEL

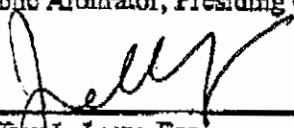
David J. Anderson	-	Public Arbitrator, Presiding Chairperson
Jeffrey L. Levy, Esq.	-	Public Arbitrator
Stephen M. Acerro, Jr., Esq.	-	Non-Public Arbitrator

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David J. Anderson
Public Arbitrator, Presiding Chairperson

Signature Date



Jeffrey L. Levy, Esq.
Public Arbitrator

3/28/05

Signature Date

Stephen M. Acerro, Jr., Esq.
Non-Public Arbitrator

Signature Date

March 29, 2005

Date of Service (For NASD Dispute Resolution use only)

Exhibit 2

New Account

Case 1:05-cv-11270-GAO Document 1-2 Filed 06/17/2005 Page 9 of 20

GENERAL INFORMATION

Title of Account: John Dennis IRA R/O 166-44-3564

Name: WFS As Custodian

Name: u/a 9/9/99

Mailing Address: 29 R. F. Higgins Drive

Street: Norwell MA 02061-1122

City: Norwell State: MA Zip: 02061-1122

Other: ()

Fax: 03/07/1952 M

Date of Birth: 03/07/1952 Gender: M

If Post Office Box or drawer used above, must provide street address

ACCOUNT CODING (see back for codes)

Standing Instructions (CSI) 4C or Dividends (DIV) 1

(PRIN) If mailing dividends, should principal payments be included?

☐ Yes ☒ No (If no, see reverse)

RIN = Cash Dividends (Check one) Reinvest? ☒ Yes ☐ No

(If yes, see reverse)

CSH-DV = Money Market Div: Reinvest? ☒ Yes ☐ No

(If no, see reverse)

CSH-O = Money Market Sweeps: ☐ Cash & Margin ☒ Cash Only

ACCT Category: D14

Investment Objectives (IO) check one: (See reverse for definitions)

☐ A Income (quality emphasis) ☐ C Growth (return emphasis)

☐ G Income (return emphasis) ☐ E Trading & Speculation

☐ B Growth & Income (quality emphasis) ☐ F Not Applicable

☐ D Growth & Income (return emphasis) ☐ I High Income

☒ H Growth (quality emphasis) ☐ J FundSource

Is client or immediate family member employed by Wheat or another NASD member or any other financial services company?

☒ No ☐ Yes: CLASS code

See back for definitions. (If YES, please complete attached and forward to Compliance.)

☒ U.S. CITIZEN ☐ RESIDENT ALIEN ☐ NON-RESIDENT ALIEN

Complete if non-resident alien: Country _____ Prov. _____

If requested, does client want us to provide client's account name and address to an issuer in which we hold securities in street name? SEC Rule 14b-1 prohibits such issuer from using the name and address for any purpose other than corporate communications. ☐ Yes ☐ No

Delivery vs. Payment Accounts Only: DTC # _____ ID Inst. # _____

Agent Bank # _____ Client # _____ FINS ID # _____

CLIENT PROFILE

Player: Channel 7 EnterCom Corp

Employer Address: Boston, MA

Title/Occupation: Sportscaster Radiocaster

Spouse's Name: _____

Spouse's Employer: _____

Spouse's D.O.B. _____ Spouse's S.S. # _____ No. of Dependents _____

Other Brokerage Accounts? (current or former) Firm Names: _____

Related Wheat First Union Accounts (account numbers): _____

(check appropriate box for all three categories)

50-49,999 (A)	50,000-99,999 (B)	100,000-199,999 (C)	200,000-499,999 (D)	500,000-999,999 (E)	1,000,000 Or More (F)	Refuse to Disclose (Z)
X						
	X					
				X		

Annual Income (all sources): _____

Net Liquid Assets: _____

Net Worth (excluding residence): _____

Tax Bracket 28 %

Investment Experience:

Stocks _____ Yrs.

Bonds 10 Yrs.

Mutual Funds _____ Yrs.

Options 10 Yrs.

Commodities _____ Yrs.

Other _____ Yrs.

ACCOUNT CONTROL

Will anyone else have authority over this account? ☐ Yes ☒ No

Name: _____ If yes, type of POA: ☐ Full ☐ Limited ☐ Discretionary

Is POA investment advisor? ☐ Yes ☒ No

If yes, did you (FC) recommend POA? ☐ Yes ☐ No

Client's CPA and Firm: _____

Is FC registered in client's state of domicile? ☒ Yes ☐ No

Was initial deposit ☐ Waived? ☐ Received? Amount \$ _____

Transaction \$ _____

Account Documentation:

☐ CRA-Individual ☒ ACATS ☐ Statement Linking - Designated Account # _____

☐ CRA-Non-Individual ☐ Option ☐ Duplicate statement / confirmation: (complete form #804)

☐ WFS-IRA ☐ Other ☐ DVP Agreement - Delivery and pickup instructions (Complete form #0804)

APPROVALS

Signature: _____ Date: 9/9/99

Branch Manager's Signature: _____ Date: 9/9/99

Wheat First Union

Wheat First Union is a division of First Union Capital Markets Corp., a separate, non-bank affiliate of First Union Corporation.

Exhibit 3

NASD ARBITRATION

In the Matter of the Arbitration between:

John Dennis

vs.

Wachovia Securities, LLC

and

Michael A. Ewanouski.

Statement of Claim

Claimant, John Dennis ("Claimant") sets forth the following facts:

1. Claimant began his involvement with Respondent, Wachovia Securities, LLC (then First Union Corporation), through Respondent Mr. Ewanouski in late 1999.
2. He was then 46 years old.
3. Claimant had told Mr. Ewanouski that he wanted Respondents to invest his account JOHN DENNIS IRA R/O FCC AS CUSTODIAN account 001-E701-2757-0624 ("Retirement Account") so that he would "grow his nest egg."
4. Mr. Ewanouski, on behalf of Claimant, purchased the following securities all of which were unsuitable for Mr. Dennis's retirement account and all of which lost money as set forth below:

Stock	Symbol	Date Bought	Shares Bought	Buying Price	Date Sold	Shares Sold	Selling Price	Net Loss
Ask Jeeves, Inc.	ASKJ	01/03/00	170	129 3/16	02/03/00	170	91 3/8	6,428.13
Elot, Inc.	ELOT	01/20/00	1000	8.5	03/16/01	2000	0.19	16,687.50
		01/20/00	1000	8.56				
EntreMed, Inc.	ENMD	11/06/00	300	33 7/8	03/16/01	700	18	11,212.50
		11/07/00	400	34 1/8				
Focus Enhancements, Inc.	FSCE	01/05/00	2150	8.25	02/03/00	2150	6 27/32	3,023.44
H Power Corp.	HPOW	05/18/01	500	14.98	07/11/01	500	6.35	4,315.00

Stock	Symbol	Date Bought	Shares Bought	Buying Price	Date Sold	Shares Sold	Selling Price	Net Loss
IXL Enterprises, Inc.	IIXL	02/03/00	880	49.44	02/15/00	446	42.56	
					03/15/00	434	32.56	10,389.99
Intasys Corp.	INTA	03/10/00	1450	13.625	03/16/01	1450	0.34	19,257.81
VA Linux Systems, Inc.	LINUX	02/03/00	110	128.125				
					03/15/00	130		
					06/08/00	340		
					03/16/01	580	3.125	38,372.50
SLI, Inc.	SLI	02/15/00	1500	14	03/10/00	1500	13.25	2,343.75
				13/16				

Total Losses on Stock Trades	\$112,030.62
Losses on Intellidata Shares, purchased on various dates	\$20,860.59
Total losses, 2000/2001	\$132,891.21

5. The value of the Retirement Account on November 30, 1999 was \$180, 491.11.
6. In approximately 90% of the cases, Mr. Ewanouski would purchase the securities for Claimant's IRA Account without Claimants permission. In the approximately 10% of the instances where permission was sought, Mr. Ewanouski never warned Claimant of the risks of such investments. Of course, in the purchases made without Claimant's authorization, there was no discussion of risks or diversification.
7. The value of the IRA Account on January 31, 2003 was \$49,878.27.
8. Throughout the period, Respondents invested Claimant's Accounts in high risk technology/internet stocks in disregard for his retirement objectives.
9. As a result of such practices by Respondent, Claimant has been damaged in the amount of \$132,891.21.

WHEREFORE, Claimant requests that the panel award him damages in the amount of \$132,891.21 plus attorneys' fees and costs.

John Dennis, by his attorneys
Zimble & Brettler, LLP

By _____
Edmund Polubinski, Jr.
21 Custom House Street
Boston, MA 02110
617/723-2222

John Dennis, Claimant

4680.0001 claim 1.0
11/20/03

Exhibit 4

DENNIS RETIREMENT
9/20/99

Stock	Quantity	Estimated Value
America On Line	100	\$10,406.25
Audible Inc	1,000	\$10,500.00
Contour Energy Co	200	\$262.60
Data General Corp.	715	\$15,059.68
Geotek	1,500	\$27.00
MCI Worldcom	170	\$12,218.75
Mediaone	70	\$4,781.87
Microsoft	120	\$10,867.50
Total		\$64, 123.65
Cash		\$36.63

DENNIS IRA
PORTFOLIO 12/31/99

Stocks Security	Quantity	Est. Value
Audible	1,000	\$15,000
Contour Energy	200	\$104
EMC (from Data General)	109.25	\$24,362.75
Geotek	1,500	0
Intel	200	\$16,462.50
MCI	405	\$21,490.31
SLI	1,000	\$13,562.50
 Total Stocks		 \$90,982.06
 Mutual Funds		 \$111,800.97
 Cash		 \$470.88
 TOTAL		 \$203,253.91

DENNIS IRA
PORTFOLIO 6/30/00

Stocks Security	Quantity	Est. Value
Contour Energy	200	\$406.20
ELOT	2,000	\$3,750
Geotek	1,500	\$19.50
Intasys	1,450	\$3,970.24
Intellidata	1,900	\$19,593.75
VA Linux Systems	580	\$24,940.00
Total Stocks		\$52,379.69
Mutual Funds		\$112,927.90
Cash		\$289.80
TOTAL		\$203,253.91

DENNIS IRA
PORTFOLIO 12/31/00

Stocks Security	Quantity	Est. Value
Contour Energy	200	\$243.80
Dollar tree Stores	300	\$7,350
ELOT	2,000	\$ 1,000
Entremed	700	\$12,075
Geotek	1,500	\$ 0
Intasys	1,450	\$588.99
Intellidata	1,900	\$4,926.03
VA Linux Systems	580	\$4,712.50
Total Stocks		\$30,898.32
Mutual Funds		\$57,069.55
Cash		\$46.90
TOTAL		\$88,014.77

DENNIS RETIREMENT ACCOUNT
6/30/01

Stocks		
Company	No. Shares	Value
Contour Energy	200	\$450
Genenoor	450	\$7,150
Geotek	1500	0
H Power	500	\$4,856
Intellidata	2,900	\$17,110
Total Stock		\$29,565.50
Cash		\$1,258.37
Mutual Funds		\$50,606.94
TOTAL		81,430.81

DENNIS RETIREMENT

4/4/02

Stocks		
Company	Shares	Value
Geotek	1,500	\$0
Contour	200	\$0.01
Intellidata	3,100	\$4,115.30
TOTAL		\$4,115.31
Mutual Funds		\$45,140.12
Cash		\$0.39
TOTAL VALUE		\$49,255.82

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS1. Title of case (name of first party on each side only) Dennis v Wachovia LLC

2. Category in which the case belongs based upon the numbered nature of suit code listed on the civil cover sheet. (See local rule 40.1(a)(1)).

- I. 160, 410, 470, 535, R.23, REGARDLESS OF NATURE OF SUIT.
- X II. 195, 196, 368, 400, 440, 441-446, 540, 550, 555, 625, 710, 720, 730, *Also complete AO 120 or AO 121 for patent, trademark or copyright cases
740, 790, 791, 820*, 830*, 840*, 850, 890, 892-894, 895, 950.
- III. 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371, 380, 385, 450, 891.
- IV. 220, 422, 423, 430, 460, 480, 490, 510, 530, 610, 620, 630, 640, 660, 690, 810, 861-865, 870, 871, 875, 900.
- V. 150, 152, 153.

05 11270 GAO

3. Title and number, if any, of related cases. (See local rule 40.1(g)). If more than one prior related case has been filed in this district please indicate the title and number of the first filed case in this court.

NOW

4. Has a prior action between the same parties and based on the same claim ever been filed in this court?

YES ☐ NO ☒

5. Does the complaint in this case question the constitutionality of an act of congress affecting the public interest? (See 28 USC §2403)

YES ☐ NO ☒

If so, is the U.S.A. or an officer, agent or employee of the U.S. a party?

YES ☐ NO ☒

6. Is this case required to be heard and determined by a district court of three judges pursuant to title 28 USC §2284?

YES ☐ NO ☒7. Do all of the parties in this action, excluding governmental agencies of the united states and the Commonwealth of Massachusetts ("governmental agencies"), residing in Massachusetts reside in the same division? - (See Local Rule 40.1(d)).YES ☒ NO ☐A. If yes, in which division do all of the non-governmental parties reside?Eastern Division ☒ Central Division ☐ Western Division ☐

B. If no, in which division do the majority of the plaintiffs or the only parties, excluding governmental agencies, residing in Massachusetts reside?

Eastern Division ☐ Central Division ☐ Western Division ☐

8. If filing a Notice of Removal - are there any motions pending in the state court requiring the attention of this Court? (If yes, submit a separate sheet identifying the motions)

YES ☐ NO ☒

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME

Edmund Polubinski

ADDRESS

600 Atlantic Ave

TELEPHONE NO.

617 523-6655

JS 44 (Rev. 11/04)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

John Dennis

(b) County of Residence of First Listed Plaintiff

(EXCEPT IN U.S. PLAINTIFF CASES)

Plymouth

(c) Attorney's (Firm Name, Address, and Telephone Number)

Edmund Polubsky / 617/523-6655
 Lyne Woodworth & Eversh, LLP
 600 Atlantic Ave., Boston, MA 02210

DEFENDANTS

WACHOVIA, LLC

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

Michael & Ward
 1 Liberty Sq Boston MA 02109

II. BASIS OF JURISDICTION

(Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES

(Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|---------------------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input checked="" type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT

(Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	LABOR	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

905C 510
 Brief description of cause: VACATE ARBITRATION AWARD

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

113,031.65

CHECK YES only if demanded in complaint:

JURY DEMAND:

☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

6/17/05

SIGNATURE OF ATTORNEY OF RECORD



FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE